

1
2
3
4
5
6
7 TIGER NATURAL GAS, INC.,
8 Plaintiff,
9 v.
10 PACIFIC GAS AND ELECTRIC
11 COMPANY, et al.,
12 Defendants.

Case No. 16-cv-06711-JSW (SK)

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**ORDER ON DISCOVERY DISPUTE
REGARDING REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Regarding Docket Nos. 67, 68, 69

Now before the Court are the joint letter discovery briefs regarding disputes over requests for production of documents.

BACKGROUND

In this action, Tiger Natural Gas, Inc. (“Plaintiff”) contends that Pacific Gas & Electric Company (“PG&E”) has engaged in fraudulent activity as the billing and collections agent for Plaintiff. (Dkt. 1, ¶¶ 4-5.) Plaintiff is a Core Transport Agent (“CTA”) and in this capacity buys gas on the open market and sells it to customers using PG&E’s system of distribution, in direct competition with PG&E. (*Id.*, ¶¶ 2, 29, 31.) PG&E must offer CTAs a billing option known as “Optional Consolidated PG&E Billing,” in which both the CTA’s charges and PG&E’s charges will appear on a single bill and in which the customer sends one payment to PG&E for both sets of charges. (*Id.*, ¶ 33.) Plaintiff alleges that PG&E and its employees have transmitted fraudulent information to the CTAs and caused damage to the CTAs. (*Id.*, ¶¶ 5 -13.)

Plaintiff alleges that PG&E participates in three fraudulent schemes: (1) the “Payment Withholding Scheme,” in which PG&E receives payments from Plaintiff’s customers and “holds” that money in a PG&E account instead of paying it to Plaintiff; (2) the “Energy Credit Scheme,” in which PG&E applies credits from its own services and programs to Plaintiff’s charges, which

1 reduces the payment to Plaintiff; and (3) the “Reversal Scheme,” in which PG&E withholds
2 amounts due to Plaintiff because of allegedly incorrectly billed amounts when the charges were
3 actually paid correctly. (*Id.*, ¶¶ 45-89.)

4 ANALYSIS

5 Plaintiff moves to compel production of documents in three main categories: (1)
6 documents regarding pricing, forecasting, allocation, and the CTA’s costs (Document Requests
7 Nos. 29 – 33), (2) documents regarding the software system used to calculate the CTA’s charges -
8 the Customer Care & Billing system (“CC&B”) (Document Requests Nos. 8-16), and (3)
9 documents from the gas procurement and lobbying group and communications with the Office of
10 Ratepayer Advocates (Document Requests Nos. 7 and 34).

11 A. Document Requests Nos. 29-33

12 Plaintiff seeks documents which Plaintiff needs for its Sherman Act antitrust claim. Here,
13 Plaintiff alleges that PG&E’s conduct in the three schemes outlined above constitutes “overt
14 predatory and exclusionary acts demonstrating its specific intention to destroy competition for
15 natural gas commodity service” to customers. (Dkt. 1, ¶ 128.)

16 Plaintiff claims its experts need to analyze “PG&E’s anticompetitive conduct, how it
17 affects the money plaintiffs must pay to PG&E for storage and transportation capacity, and its
18 results on the natural gas market in Northern California.” (Dkt. 67 at page 4.) Specifically, in
19 Document Request No. 29, Plaintiff claims that it seeks “source documents” showing how PG&E
20 developed tariffed rates “to ensure that PG&E’s rates for storage and transportation and
21 commodity price are correctly calculated.” (*Id.* at page 5.) However, as PG&E correctly points
22 out, the rate that PG&E charged for storage and commodity price are not at issue in this litigation.
23 (*Id.* at page 7.) The relevant issue is whether PG&E’s billing practices in the three schemes
24 violate the Sherman Act.

25 In Document Request No. 30, Plaintiff seeks documents regarding forecasting and
26 procurement to “establish whether PG&E properly calculated and charged the CTAs for storage
27 and transportation.” (*Id.* at page 5.) Again, pricing is not an issue in this case.

28 In Document Requests Nos. 31 - 33, Plaintiff seeks documents regarding changes in

1 PG&E's pipeline allocation, the load and storage costs of CTAs, and core gas supply procurement
2 for pipeline and storage. (*Id.*) Plaintiff claims, without any explanation, that its expert witnesses
3 need this information to compile a report, but Plaintiff provides no explanation of how these
4 documents are relevant to the damages alleged in this case. (*Id.*) PG&E points out that, in the
5 Complaint, Plaintiff alleges only that PG&E's anticompetitive behavior increased operating
6 expenses for CTAs because PG&E's schemes eliminate the CTAs' customers, and they must
7 spend more on marketing costs to attract customers. (Dkt. 1, ¶ 130; Dkt. 67 at page 7.) In
8 addition, Plaintiff alleges in the Complaint that CTA's have large carrying costs because PG&E's
9 schemes result in late payments – if at all – to CTAs such as Plaintiff. (Dkt. 1, ¶ 131.) The
10 documents Plaintiff seeks in Requests Nos. 31 – 33 do not address the specific harm that Plaintiff
11 alleges. In addition, even on their face, the documents sought in Requests Nos. 31 – 33 are not
12 relevant to damages or market share.

13 For these reasons, Plaintiff's motion to compel documents responsive to Requests Nos. 29-
14 33 is DENIED.

15 **B. Document Requests Nos. 8-16**

16 Plaintiff seeks documents regarding changes to the billing system, as Plaintiff asserted in
17 hearing for this motion, that Plaintiff is concerned about changes to the billing system that
18 adversely affected Plaintiff. Plaintiff is also concerned that PG&E will allege as a defense that
19 PG&E made changes to its billing system to “ameliorate the effects of the three schemes set forth
20 in the Complaint.” (Dkt. 68 at page 4.) Plaintiff also seeks documents about potential changes
21 that PG&E considered but rejected. (*Id.*) At the hearing on this matter, Plaintiff pointed to
22 specific categories in which their expert or consultant found discrepancies in billing that caused
23 Plaintiff to suspect a change in the billing system.

24 The parties have conducted discovery in a similar case, *United Energy Trading, LLC v.*
25 *Pacific Gas & Elec. Co.*, No. 15-CV-2383-RS (the “UET litigation”). In that case, Plaintiff
26 United Energy Trading LLC, represented by the same counsel, took the deposition of PG&E
27 pursuant to Fed. R. Civ. P. 30(b)(6). PG&E designated Kimberly Miller as the deponent, and she
28 testified that PG&E had made two changes to the billing system and that she was not aware of any

1 others. (Dkt. 68-2, Ex. 2.) The parties have stipulated that Plaintiff may rely upon Miller's
2 testimony.

3 Here, PG&E argues that producing documents in response to Requests Nos. 8-16 is
4 burdensome and not proportional to the case. (Dkt. 68 at page 2.) The Court agrees. However,
5 the Court finds that some examination of the changes to the billing system or lack of changes to
6 the billing system is proportional to the needs of the case. The Court ORDERS Plaintiff to
7 identify 10 representative samples of billing errors that Plaintiff suspects were caused by changes
8 in the billing system and provide that information to PG&E within 5 business days. The Court
9 ORDERS PG&E to produce a witness most knowledgeable on the subject of whether the errors
10 were the result of a change in the billing system. The parties must meet and confer on a date for
11 the deposition, but the deposition can take place after PG&E has at least 10 business days from the
12 receipt of the information from Plaintiff with the representative samples.

13 **C. Document Requests Nos. 7 and 34**

14 Plaintiff seeks documents responsive to Request No. 7 from PG&E's gas procurement and
15 lobbying group. (Dkt. 69 at pages 1, 4.) Although PG&E produced documents responsive to
16 Request No. 7 in the UET litigation, PG&E did not search for those responsive documents from
17 all of the files of the lobbying groups. (*Id.* at page 1.) The Court finds that the request to search
18 all the files of lobbying groups for documents responsive to Request No. 7 is not proportional to
19 the case. It is possible that there is a responsive document in one of those files, but the likelihood
20 is slim, given the nature of the lobbying groups' work. The motion to compel PG&E to search all
21 the files of the lobbying groups to find documents responsive to Request No. 7 is DENIED.

22 Plaintiff also seeks documents responsive to Request No. 34 which address
23 communications between PG&E and the Office of Rate Payer Advocates about CTAs. (*Id.* at
24 page 1.) PG&E produced a document, the "ORA Report." (*Id.* at page 5.) PG&E is producing
25 quarterly reports and communications with ORA about the reports. (*Id.* at page 8.)

26 ///

27 ///

28 ///

1 There appears to be no relevance of communications between PG&E and ORA about
2 CTAs, and Plaintiff provides no explanation for the relevance. Thus, the motion to compel further
3 documents responsive to Request No. 34 is DENIED.

4 **IT IS SO ORDERED.**

5 Dated: July 31, 2018



6
7 SALLIE KIM
8 United States Magistrate Judge